

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6455 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

BALOL SEVA SAHAKARI MANDALI LTD

Versus

ADDITIONAL REGISTRAR

Appearance:

MR PK JANI for Petitioner

MR. S.R. DIVETIA, AGP, for Respondent Nos. 1 & 2

CORAM : MR.JUSTICE R.K.ABICHANDANI

Date of decision: 13/10/97

ORAL JUDGEMENT

Rule. Mr. Divetia, learned AGP, waives service of rule for the respondents. At the request of both the sides the matter is taken up for final disposal.

The grievance of the petitioner is that the respondent authorities have made the impugned orders of winding up of the petitioner society without giving any opportunity of hearing either at the stage of passing the

initial interim order directing the society to be wound up or at the time of confirming the interim order.

There is no dispute about the fact that no hearing was given before making of the interim order directing the petitioner society to be wound up or before making of the final order. It is a settled legal position in view of the decision of a Division Bench of this Court in APEXA CO-OPERATIVE BANK LIMITED VS. DISTRICT REGISTRAR reported in 1993(2) G.L.H. 861 that right of hearing provided at the second stage of the proceedings cannot be treated as having excluded by necessary implication the right of hearing at the first stage of hearing. Right of prior notice and hearing existed even before the interim order was made under Section 107(1) of the Gujarat Co-operative Societies Act, 1961. The respondents rightly did not controvert this settled legal position. The impugned orders being contrary to the principles of natural justice and violative of provisions of Section 107 of the said Act cannot therefore be sustained and are hereby set aside. It will be open for the concerned authority to initiate liquidation proceedings afresh in accordance with Chapter X of the said Act and in light of the ratio of the decision of this court in APEXA CO-OPERATIVE BANK LIMITED (supra). Rule is made absolute accordingly with no order as to costs.

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